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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,835	06/27/2003	Kazuhiro Nakamura	KAS-184	4821

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MATTINGLY, STANGER & MALUR, P.C.
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EXAMINER

GORDON, BRIAN R

ART UNIT	PAPER NUMBER
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1743

MAIL DATE	DELIVERY MODE
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06/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/606,835

Applicant(s)

NAKAMURA ET AL.

Examiner

Brian R. Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6-8-07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3 and 5-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3, and 5-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6-27-03 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 8, 2007 has been entered.

Response to Arguments

2. Applicant's arguments filed June 8, 2007 have been fully considered but they are not persuasive.

The claims have been amended to incorporate new matter (explained below).

As to applicant's remarks in regards to the drawings and defining the means of the claim, applicant states the entire computer management system 11 is the same element of those means of claims 2, 3, 5, and 7-10 (see applicant's remarks 12/19/06; page 9). As such, it is asserted the claims referenced above do not add in further structure to that recited in claim 1, but yet recite additional functions or intended use of the control separation means (entire computer management system 11, as previously interpreted as such). A device which discloses a computer system capable of being programmed to operate as such would meet the limitations of the claims.

As to the art rejection, applicant asserts "Mimura avoids an interruption of an analysis when a reagent is short in one of a plurality of analyzing apparatuses. This is different from Applicants' invention as now claimed."

Such an argument is not commensurate in scope with that of the claims. The claims do not require the entire device or all modules to cease operation at the detection of a shortage. The claim only requires that the analyzing apparatus in which the shortage is detected be stopped (separated from control). Which is what Mimura teaches the specific unit with the shortage is stopped, no longer controlled, or operated.

As previously stated in the prior office action, as pointed out by applicant, unlike applicant's invention shutting down the entire system of Mimura et al. is not required when a shortage is detected. However each individual unit can be shutdown (stopped) when a shortage is detected.

The moment in time which the operator chooses to change the reagent of the shutdown unit is a matter of choice. The operator can change the reagent in the shutdown unit while the remaining unit continues to operate or choose to do such when all analysis has been completed.

The device of Mimura appears to allow for a more efficient analysis operation than that of applicant by preventing a delay in processing. There appears to be no advantage in shutting down the entire operation of the device.

The "register means" as claimed is a further function of the computer system. The computer system of Mimura is structurally capable of identifying by name what reagent is short.

Mimura discloses the required structure of the shortage detector and the computer system as required.

For reasons given herein, the previous rejection of claims 1 and 3, and 5-10 are hereby maintained.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1, 3, 5-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification fails disclose a register means as claimed. Applicant failed to provide where such a register means is supported by the specification. The specification does not state the specific names of reagent which is detected as short as being registered. The specification discloses a reagent is designated to a specific measurement item.

[0044] In step 401, an item name of measurement for urging the exchange of the reagent is designated for the analyzing module, and a register button 500 is pushed thereby to set the reagent of the item name `A` (502) as being designated.

Furthermore the term "register means" is not defined in the specification. As such it is unclear what specific structural element(s) of applicant invention is considered to define the "register means" or what is an equivalent thereof.

Furthermore the added material gives the impression as if the name of a reagent is only registered at the point when a shortage is detected. However each reagent appears to be registered with a measurement item name prior to the shortage detection (in advance as given in original claim 2). It appears that when a shortage of a reagent is detected, it is the associated analyzing module that is registered at that point and again after the reagent is exchanged (see paragraphs 0049 and 0052-0053).

Claim Rejections - 35 USC § 112

5. Claims 3, 6, and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In the second paragraph of claim 3, it is unclear what apparatus the term "the automatic analyzing apparatus" references for there is no antecedent basis for such device in addition claim 1 is directed to a plurality of analyzing apparatuses. So which is the automated analyzing apparatus?

It is unclear what is meant by the phrase: "a buffer in which the sample to be analyzed by the analyzing apparatus separated from the analyzing system is placed in a stand-by state,"

There is no antecedent basis for "the sample". It applicant intending to claim the buffer comprises a sample?

There is no antecedent basis for "the analyzing apparatus separated from the analyzing system".

It appears as that besides claiming a buffer the remaining portion of the claim is directed to the process of using the device or how one intends for the device to operate.

In claim 6 it is unclear which of analyzing apparatus of the plurality is referenced by the term "the analyzing apparatus" in the next to last line.

Claim Rejections - 35 USC § 102

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1 and 3-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Mimura et al. US 6,733,728.

Mimura discloses the invention as claimed. Mimura discloses an analyzer system comprising a transfer line for transferring a sample rack from a rack providing portion to a rack storage portion, and a plurality of analyzer units each having a reaction unit, a sample pipetting unit for pipetting a sample on the sample rack into the reaction unit, and a reagent supply unit for supplying a reagent corresponding to an analysis item to the reaction unit, the plurality of analyzer units being arranged along the transfer line, and a large number of samples being inspected and analyzed using the plurality of analyzer units. In the present invention, an analysis-item corresponding reagent used for the same kind of designated analysis item is allocated to a designated analyzer unit and another analyzer unit of the plurality of analyzer units, respectively, and the above designated analysis item is processed by the designated analyzer unit. A control unit

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(shortage detection) judges whether the amount of the above described analysis-item corresponding reagent is short or not in accompanying the consumption of this analysis-item corresponding reagent in the designated analyzer unit (column 2, lines 6-24).

The control unit has a central control computer 40, analyzer unit computers 6A to 6G, and a floppy disk memory 41. The analyzer unit computers 6A to 6G process the output signals from the individual analyzer unit. The central control computer 40 connected to those individual analyzer unit computers 6A to 6G controls the operation of the individual analysis units, the rack transfer system and the related sub-parts in the analyzer system as well as performs numerical calculations and control actions necessary for designated information processing. **Function assignment to the computers is not limited to the above example**, but can be modified in response to various requirements on the system configuration, even including such a case that all the control functions conventionally assigned to the distributed analyzer unit computers can be integrated onto the central control computer 40 and the analyzer unit computers can be retired. The central control computer 40 includes a memory unit 45, to which are connected the operation unit 42 used for data input, the CRT 43 (display) for displaying information visually, and the printer 44 for outputting the measurement and examination results (column 4, lines 19-39).

The amount of the reagent fluid left in the reagent bottle used for the individual analysis items in the individual analyzer units is monitored by the central control computer 40. As for the method for monitoring the reagent fluid left in the reagent bottle, often used are a method in which the fluid level sensor attached to the reagent pipette

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nozzle detects the reagent fluid level in the reagent bottle when the corresponding reagent fluid is picked up and pipetted, or a method in which a pre-input maximum analyzable number is subtracted by one every pipetting of the reagent. In either of the methods described above, whether the amount of the reagent fluid used for the designated analysis items is enough or short is determined by the central control computer 4 considering whether the remaining analyzable number reaches the value or not. The lower bound value pre-determined in this case is, for example, zero, 1 or 2. For example, in case that the amount of the reagent fluid for GOT stored in the specified analyzer unit 3B is proved to be short, the analysis of GOT by the analyzer unit 3B is interrupted and at the same time, the analysis of GOT is switched to the analyzer unit 3A which may contain enough of the reagent fluid for GOT inspection. Therefore, the samples to be processed for GOT inspection analysis operation are forwarded directly to the analyzer unit 3A to which the operation priority for GOT inspection is assigned thereafter (column 9, line 36 –column 10, line 35).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is 571-272-1258. The examiner can normally be reached on M-F, Telework Thurs., 1st Fri. Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Brian R Gordon
Primary Examiner
Art Unit 1743

brg

BRIAN R. GORDON
PRIMARY EXAMINER